

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

IN THE MATTER OF THE APPLICATION)	
OF ASSOCIATED SEA FARMS FOR RENEWAL)	FINDINGS OF FACT,
OF AN AQUACULTURE LEASE LOCATED NORTH)	CONCLUSIONS OF LAW AND
OF PERKINS POINT, DAMARISCOTTA RIVER,)	DECISION
NEWCASTLE, LINCOLN COUNTY, MAINE)	

On January 14, 2000, Associated Sea Farms made application for renewal of an aquaculture lease issued to them on July 20, 2000. The application requested a ten-year renewal to July 19, 2000 of a 23.8 acre bottom culture lease located north of Perkins Point in the Damariscotta River, Newcastle, Lincoln County, Maine.

Notice of the application for lease renewal was published in the April, 2000 issue of Commercial Fisheries News and the March 16, 2000 and March 30, 2000 issues of the Lincoln County News. Members of the public and interested parties were given to April 15, 2000 to request a hearing on the application for lease renewal. No requests for a hearing on this application were received by the Department during the comment period that ended April 15, 2000, or at any time subsequent to the date of this decision.

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12), which provides that an aquaculture lease may be renewed if the lessee has complied with the original lease agreement during its term, that aquaculture has been conducted on the original lease, and that the renewal will not cause the lessee to be a tenant of any kind in aquaculture leases covering an aggregate of more than 250 acres.

Evidence Concerning the Lease Renewal

Comments were received from three riparian landowners. Their comments included a concern that the lease boundary markers had not been properly maintained. The original boundary locations may have been in error. A dispute was also described regarding the location and maintenance of a riparian's mooring. The riparian and the leaseholder's representatives provided written comments on this issue.

Findings of Fact

To clarify the dispute regarding a riparian mooring and the lease location, the Department's Aquaculture Environmental Coordinator (AEC) visited the area on April 25, 2000. Using a differential geodetic positioning system (dgps) the riparian mooring was found to be located approximately 72 feet southwest from the southwest corner of the lease. Since the mooring was found to be located outside of the lease boundary, responsibility of the riparian's mooring is considered the responsibility of the riparian.

The original application file was reviewed to determine if the original lease description could have been in error, particularly if a floating aid to navigation was used in the description. According to the file, a professional surveyor established the boundaries. The point of origin for the boundary description was a fixed drill hole in a ledge on the Perkins Point shore. A fixed, not floating, aid to navigation was also included in the description. However, since the aid is a fixed, rigid structure, it is not considered likely to have introduced a significant error in the description.

According to the leaseholder's representatives, only that portion of the lease in active use has been routinely marked to minimize any interference with navigation of the river. Although this action is considered a common sense approach to navigation concerns, it appears to have led to confusion regarding the location of the lease and the Department regulations on lease marking. According to Department regulations Chapter 2.80, the leaseholder is required to mark the corners and perimeter of the lease area as described in that chapter. It should be noted that enforcement actions cannot be taken, particularly against poachers, if the boundary is not marked.

According to Department records and the findings, the lessee has conducted aquaculture and complied with the original lease agreement with the exception of the boundary marking. According to the leaseholder's representatives, the number of boundary markers may not have always been set in compliance with Department regulations Chapter 2.80 in order to minimize interference with navigation. The Department recognizes that marker buoys generally have to be reset in the spring of the year following any winter ice conditions and that navigation

concerns may have taken precedence over lease marking requirements. This is not considered a violation that is of a magnitude to warrant non-renewal of the lease.

This information, taken into consideration with the applicant's compliance with all Department monitoring, administrative fees, records, and lease requirement throughout the previous term, indicates that the prior applicant has met all applicable requirements satisfactory to the Department.

Based on the evidence that the lessee has conducted aquaculture and complied with the original lease agreement, I find that the renewal of the lease is in the best interests of the State, with a reiteration that the lease must be marked in accordance with Department regulations Chapter 2.80, as set forth in the original lease. Department records indicate that the lessee does not hold leases exceeding an aggregate of more than 250 acres.

Conclusions

The evidence in the administrative record supports a finding that the lessee meets the requirements for the renewal for an aquaculture lease set forth in 12 M.R.S.A. §6072(12).

Decision

The Commissioner of Marine Resources grants the renewal of Associated Sea Farms to renew a 23.8 acre aquaculture lease located north of Perkins Point in the Damariscotta River, Newcastle, Maine, for a period of ten years, to July 19, 2010. In renewal of this lease, Associated Sea Farms is subject to the same terms, conditions, and obligations set forth in the original lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources